



NORTH CAROLINA LAW REVIEW

Volume 68 | Number 6

Article 10

9-1-1990

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Recommended Citation

Kerry A. Shad, *State v. Norman: Self-Defense Unavailable to Battered Women Who Kill Passive Abusers*, 68 N.C. L. REV. 1159 (1990).
Available at: <http://scholarship.law.unc.edu/nclr/vol68/iss6/10>

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State v. Norman: Self-Defense Unavailable to Battered Women Who Kill Passive Abusers

The law of North Carolina traditionally has recognized the right to defend oneself when presented with a threat of imminent death or great bodily harm.¹ Recently, the North Carolina Supreme Court faced the difficult task of applying the traditional rules of self-defense² to a nontraditional defendant, the battered woman.³ Defendant in *State v. Norman*,⁴ a battered wife, killed her husband as he slept. At trial she asserted that the killing was an act of self-defense. The court held that a sleeping victim, as a matter of law,⁵ does not present the imminent threat⁶ required before a defendant is entitled to an instruction on either

1. See *State v. Gappins*, 320 N.C. 64, 70-74, 357 S.E.2d 654, 659-60 (1987); *State v. Norris*, 303 N.C. 526, 530, 279 S.E.2d 570, 572-73 (1981); *State v. Holland*, 193 N.C. 713, 718-20, 138 S.E. 8, 10-11 (1927). "Self-defense" is the term of art that describes this right. BLACK'S LAW DICTIONARY 1219-20 (5th ed. 1979).

2. Self-defense may be either "perfect" or "imperfect." These definitions differ in essential elements and in classification as either justification or excuse.

A defendant is entitled to an instruction on perfect self-defense if the evidence tends to show that at the time of the killing: 1) the defendant believed it necessary to kill the victim to save himself from imminent death or great bodily harm; 2) the circumstances as they appeared to the defendant were sufficient to create such a belief in the mind of a person of ordinary firmness; 3) the defendant was not the aggressor in the confrontation; and 4) the defendant did not use more force than actually or apparently was necessary under the circumstances. *Gappins*, 320 N.C. at 70-71, 357 S.E.2d at 659. An instruction on imperfect self-defense is appropriate when the evidence tends to support the existence of only the first two elements. *State v. Bush*, 307 N.C. 152, 159, 297 S.E.2d 563, 568 (1982).

Perfect self-defense is a justification for homicide. *State v. Norman*, 324 N.C. 253, 259-60, 378 S.E.2d 8, 13 (1989). If a homicide is "justified," the defendant is exonerated and is entitled to an acquittal. *Norris*, 303 N.C. at 530, 279 S.E.2d at 573; see also Mather, *The Skeleton in the Closet: The Battered Woman Syndrome, Self-Defense, and Expert Testimony*, 39 MERCER L. REV. 545, 563 (1988). At common law, the law "excused" crimes if the unique characteristics of the defendant rendered him less blameworthy. *Id.* Imperfect self-defense, a common-law "excuse," may afford a defendant a mitigated sentence, but does not guarantee acquittal. *State v. Mize*, 316 N.C. 48, 52, 340 S.E.2d 439, 441 (1986). Other examples of excusable homicide are accidental killings and killings committed by insane persons. R. PERKINS & R. BOYCE, CRIMINAL LAW 1124 (3d ed. 1982). The crucial distinction is that an excused defendant, if convicted, is still guilty of a lesser crime, such as manslaughter rather than murder, W. LAFAVE & A. SCOTT, CRIMINAL LAW 463 (2d ed. 1986), while one whose actions are justified is not guilty of any crime, *id.* at 454-63; R. PERKINS & R. BOYCE, *supra*, at 1113-16; see also Rosen, *The Excuse of Self-Defense: Correcting a Historical Accident on Behalf of Battered Women Who Kill*, 36 AM. U.L. REV. 11 (1986) (arguing for classification of self-defense as an excuse for battered women).

3. Battered woman syndrome describes a physically and psychologically abusive relationship between a woman and her spouse or lover and its effects on the battered woman. L. WALKER, THE BATTERED WOMAN xv (1979). This condition has also been described as "battered wife syndrome," see *State v. Baker*, 120 N.H. 773, 775, 424 A.2d 171, 173 (1980), and "battered spouse" syndrome, see *State v. Felton*, 110 Wis. 2d 485, 488, 329 N.W.2d 161, 163 (1983). It is not a mental illness and does not appear in the *Diagnostic and Statistical Manual of Mental Disorders (DSM-III)*; however, battered woman syndrome is similar to forms of post-traumatic stress disorder, such as that experienced after combat or natural disasters, which are listed in *DSM-III*. *People v. Aris*, 215 Cal. App. 3d 1178, 1194, 264 Cal. Rptr. 167, 177 (1989) (recounting testimony of Dr. Lenore Walker). For a full discussion of battered woman syndrome, see *infra* text accompanying notes 39-63.

4. 324 N.C. 253, 378 S.E.2d 8 (1989).

5. *Black's Law Dictionary* defines "matter of law" as "[w]hatever is to be ascertained or decided by the application of statutory rules or the principles and determinations of the law, as distinguished from the investigation of particular facts." BLACK'S LAW DICTIONARY 883 (5th ed. 1979).

6. An imminent threat must exist in order for defendant's belief in the need for self-defense to be reasonable. See *State v. Gappins*, 320 N.C. 64, 73, 357 S.E.2d 654, 660 (1987); *State v. Mize*, 316

perfect or imperfect self-defense.⁷ The *Norman* defendant's unsuccessful attempt to assert self-defense graphically illustrates the inability of the traditional rules of self-defense to acknowledge and incorporate the unique psychology of the battered woman.

This Note first examines the law of self-defense in North Carolina⁸ and provides an overview of battered woman syndrome and the typical psychological profile of a battered woman.⁹ It then analyzes both the North Carolina Court of Appeals' and the North Carolina Supreme Court's applications of the law of self-defense in *Norman*, in light of the evidence of Mrs. Norman's status as a battered woman.¹⁰ The author agrees with the *Norman* court's conclusion that the traditional rules of self-defense are not applicable to battered women who kill in nonconfrontational settings. The Note then discusses possible modifications in the law of self-defense and alternative defenses that would take into consideration the special psychological condition of battered women. Nevertheless, the Note concludes that changing the current rules of self-defense to accommodate the battered woman's peculiar situation is not an acceptable solution. Rather, the legislature should expand the definition of voluntary manslaughter to include cases in which the defendant establishes that she suffers from battered woman syndrome. Further, the North Carolina General Assembly must enact more comprehensive legislation addressing the plight of the battered woman in an effort to prevent domestic violence from reaching the point at which violent self-help is the only apparent remedy.¹¹

Judy and J.T. Norman's twenty-five-year marriage ended on June 12, 1985, when Mrs. Norman shot and killed her husband as he slept.¹² J.T. Norman's death marked the culmination of a relationship that for more than twenty years was characterized by his extreme physical and mental abuse of Mrs. Norman.¹³

N.C. 48, 53, 340 S.E.2d 439, 442 (1986); *State v. Spaulding*, 298 N.C. 149, 157, 257 S.E.2d 391, 396 (1979); *State v. Kinney*, 92 N.C. App. 671, 676, 375 S.E.2d 692, 695 (1989); *infra* text accompanying notes 25-37 (discussing imminence and the other elements of self-defense).

7. *Norman*, 324 N.C. at 254, 378 S.E.2d at 9. For definitions of perfect and imperfect self-defense, see *supra* note 2.

8. See *infra* notes 25-38 and accompanying text.

9. See *infra* notes 39-63 and accompanying text.

10. See *infra* notes 64-102 and accompanying text.

11. See *infra* notes 136-41 and accompanying text.

12. *Norman*, 324 N.C. at 254-55, 378 S.E.2d at 9-10. An autopsy report indicated that Mr. Norman suffered three gunshot wounds to the head. *Id.* at 254, 378 S.E.2d at 9. At the time of his death Mr. Norman had a blood-alcohol level of .12%, *id.*, which rendered Mr. Norman legally intoxicated under the standards of North Carolina law for operation of motor vehicles. N.C. GEN. STAT. § 20-138.1(a)(2) (1983) (establishing .10 as blood alcohol level at which one suffers legal intoxication).

13. *Norman*, 324 N.C. at 255-58, 378 S.E.2d at 9-11. Mrs. Norman testified that her husband's alcoholism and abusive behavior surfaced approximately five years into their marriage. Mr. Norman regularly assaulted her, punching, kicking, slapping, and striking her with objects such as beer bottles and glasses. She also described having cigarettes extinguished against her skin, hot coffee poured on her, and glass and food crushed against her face. *Id.* at 255, 378 S.E.2d at 10.

In addition to the physical abuse, Mr. Norman forced Judy Norman to prostitute herself at truck stops to support the family. Failure to earn a minimum sum per day resulted in severe beatings. *Id.* He also forced Mrs. Norman to eat pet food out of pets' bowls and to bark like a dog. *Id.* At other times he deprived her of food and forced her to sleep on the floor. Threats to kill or maim her were routine. *Id.*

After her arrest, Mrs. Norman faced charges of first degree murder.¹⁴ At trial Mrs. Norman testified that the intensity of the violence had escalated over the thirty-six-hour period preceding the killing, prompting her to seek various sources of help and even to attempt suicide.¹⁵ The investigating officer recounted Mrs. Norman's statements to him that on the day of the killing she had suffered repeated beatings at the hands of Mr. Norman.¹⁶ According to the officer, Mrs. Norman told him that when her husband fell asleep she took her grandchild to her mother's house, obtained a gun, returned home, and killed Mr. Norman in his sleep.¹⁷

In order to demonstrate the reasonableness of Mrs. Norman's beliefs and actions,¹⁸ the defense offered two experts who testified that Mrs. Norman fit the profile of a woman suffering from battered woman syndrome.¹⁹ The trial court refused to submit the issue of self-defense to the jury, however, ruling that the victim's passivity at the time of the killing barred Mrs. Norman from asserting self-defense as a justification or as an excuse.²⁰ The jury convicted Mrs. Norman of voluntary manslaughter,²¹ and the judge sentenced her to six years in prison.²² The North Carolina Court of Appeals held that the evidence was suffi-

14. *Id.* at 253, 378 S.E.2d at 9.

15. *Id.* at 256, 378 S.E.2d at 10. The day before the killing, police arrested Mr. Norman for drunken driving. After his release the next morning, his physical abuse of Mrs. Norman became more severe and his mood angrier. Mrs. Norman called the sheriff, but, fearing that her husband would kill her if he were arrested and later released, refused to file a complaint. *Id.* Deputies left the scene only to return one hour later after Mrs. Norman consumed a bottle of pills. *Id.*

The next day Mrs. Norman contacted a mental health center and explored the possibility of involuntarily committing her husband. She also went to a social services office, but her husband followed her, forced her to return home, and beat her severely. *Id.* at 257, 378 S.E.2d at 11. Later, while Mrs. Norman drove Mr. Norman and a friend to Spartanburg, South Carolina, her husband slapped her, kicked her in the head, doused her with beer, and told her that he would "cut her breast off and shove it up her rear end." *State v. Norman*, 89 N.C. App. 384, 387, 366 S.E.2d 586, 588 (1988), *rev'd*, 324 N.C. 253, 378 S.E.2d 8 (1989).

16. *Norman*, 324 N.C. at 254, 378 S.E.2d at 9.

17. *Id.* at 254-55, 378 S.E.2d at 9.

18. *Id.* at 258-59, 378 S.E.2d at 11-12.

19. *Id.* at 258, 378 S.E.2d at 11. For discussions of battered woman syndrome, see *supra* note 3 and *infra* notes 39-63 and accompanying text. The defense presented testimony by Dr. William Tyson, a psychologist, and Dr. Robert Rollins, the attending physician who evaluated Mrs. Norman at Dorothea Dix Hospital. *Norman*, 324 N.C. at 258, 378 S.E.2d at 11. Dr. Tyson stated his opinion that "Mrs. Norman believed herself to be doomed . . . that death was inevitable" and "that she had no choice but to . . . exhibit deadly force against Mr. Norman." *Id.* Dr. Rollins testified that Mrs. Norman "saw herself as powerless to deal with the situation, that there was no alternative, no way she could escape it" and that killing Mr. Norman appeared "necessary to Mrs. Norman." *Id.*

20. *State v. Norman*, 89 N.C. App. 384, 391, 366 S.E.2d 586, 590 (1988), *rev'd*, 324 N.C. 253, 378 S.E.2d 8 (1989). For discussion of the distinction between justifications and excuses, see *supra* note 2 and *infra* notes 113-15 and accompanying text.

21. The trial court instructed the jury on first degree murder, second degree murder, and voluntary manslaughter. *Norman*, 89 N.C. App. at 385, 366 S.E.2d at 587. First degree murder is an "unlawful killing committed with malice and with premeditation and deliberation." N.C. GEN. STAT. § 14-17 (1986); *State v. Norris*, 303 N.C. 526, 529, 279 S.E.2d 570, 572 (1981). Second degree murder is "the unlawful killing of a human being with malice and without premeditation and deliberation." *State v. Jones*, 299 N.C. 103, 109, 261 S.E.2d 1, 6 (1980). Voluntary manslaughter is "an intentional killing without premeditation, deliberation or malice but done in the heat of passion suddenly aroused by adequate provocation or in the exercise of imperfect self-defense where excessive force under the circumstances was used or where defendant is the aggressor." *State v. Wallace*, 309 N.C. 141, 149, 305 S.E.2d 548, 553 (1983).

22. *Norman*, 89 N.C. App. at 384, 366 S.E.2d at 586-87.

cient to entitle Mrs. Norman to an instruction on perfect self-defense, reversed the trial court, and ordered a new trial.²³ The North Carolina Supreme Court ultimately reversed the court of appeals and affirmed the trial court's refusal to give an instruction on self-defense.²⁴

North Carolina courts traditionally have recognized a right to an instruction on perfect self-defense in cases in which the evidence is sufficient to permit a jury to find the existence of the following four elements:

- 1) the defendant believed it to be necessary to kill the victim to save himself from imminent death or great bodily harm;
- 2) the circumstances as they appeared to the defendant were sufficient to create such a belief in the mind of a person of ordinary firmness;
- 3) the defendant was not the aggressor in the confrontation; and
- 4) the defendant did not use more force than actually or apparently was necessary under the circumstances to protect himself from imminent death or great bodily harm.²⁵

This four-part test requires North Carolina courts to evaluate the conduct of a defendant asserting self-defense on both subjective and objective levels.²⁶ The

23. *Id.* at 391-94, 366 S.E.2d at 590-92.

24. *Norman*, 324 N.C. at 266, 378 S.E.2d at 16. On July 7, 1989, three months after the North Carolina Supreme Court's decision reinstated Mrs. Norman's conviction, North Carolina Governor James G. Martin commuted her sentence and ordered her released from prison. *Ruffin, Battered Wife Released From Prison*, News & Observer (Raleigh), July 8, 1989, at A1, col. 1. Mrs. Norman had served two months in prison. *Id.*

25. *State v. Gappins*, 320 N.C. 64, 70-71, 357 S.E.2d 654, 659 (1987).

26. Courts generally use either an objective or subjective standard to evaluate the second element, the reasonableness of a defendant's actions. Courts in states that employ an objective standard, including North Carolina, require that defendant's fear be both honest and reasonable. *W. LaFAVE & A. SCOTT*, *supra* note 2, at 457. For examples of the application of this standard in cases involving battered women, see *Langley v. State*, 373 So. 2d 1267, 1271 (Ala. Crim. App. 1979); *Nygren v. State*, 616 P.2d 20, 22 (Alaska 1980); *People v. Aris*, 215 Cal. App. 3d 1178, 1196, 264 Cal. Rptr. 167, 179 (1989); *People v. Reed*, 695 P.2d 806, 807 (Colo. Ct. App. 1984); *People v. Dillon*, 24 Ill. 2d 122, 125, 180 N.E.2d 503, 504 (1962); *State v. Nunn*, 356 N.W.2d 601, 604 (Iowa Ct. App. 1984); *State v. Stewart*, 243 Kan. 639, 649, 763 P.2d 572, 579 (1989) (overruling prior case to extent that it called for subjective evaluation); *State v. Lynch*, 436 So. 2d 567, 569 (La. 1983); *May v. State*, 460 So. 2d 778, 784 (Miss. 1984); *State v. Martin*, 666 S.W.2d 895, 899 (Mo. Ct. App. 1984); *State v. Kelly*, 97 N.J. 178, 197, 478 A.2d 364, 373 (1984); *State v. Gallegos*, 104 N.M. 247, 249, 719 P.2d 1268, 1270 (Ct. App. 1986); *People v. Emick*, 103 A.D.2d 643, 658, 481 N.Y.S.2d 552, 562 (1984); *Easterling v. State*, 267 P.2d 185, 187 (Okla. Crim. App. 1954); *Commonwealth v. Helm*, 402 A.2d 500, 504 (Pa. 1979).

A minority of courts, following the Model Penal Code's subjective approach, require the jury to evaluate all of the circumstances and decide whether "[the] defendant's perception of the danger and immediacy of the harm and the amount of force used was reasonable." *Mather*, *supra* note 2, at 569. For cases applying a subjective standard, see *State v. Gallegos*, 104 N.M. 247, 249, 719 P.2d 1268, 1270 (Ct. App. 1986) ("hybrid" standard adopted, but individual perception of the defendant is crucial factor); *People v. Torres*, 128 Misc. 2d 129, 130, 488 N.Y.S.2d 358, 360 (1985) (test of reasonableness is "whether the defendant's subjective belief as to the imminence and seriousness of the danger was reasonable"); *State v. Leidholm*, 334 N.W.2d 811, 817-18 (N.D. 1983) (finder of fact must view circumstances surrounding defendant's use of force from perspective of defendant to determine if sufficient to create an honest and reasonable belief in the mind of defendant that force was necessary to protect himself from imminent harm); *State v. Thomas*, 66 Ohio St. 2d 518, 520 n.2, 423 N.E.2d 137, 139 n.2 (1981) (jury must put itself in position of defendant "with her characteristics . . . feelings . . . knowledge, and under the same circumstances and conditions that surrounded her at the time the act was done"); *Felder v. State*, 683 S.W.2d 565, 592 (Tex. Crim. App. 1985) (statute provides for subjective standard of reasonableness with the defendant's state of mind being the con-

first element, that the defendant believe in the need for his actions, requires a subjective analysis.²⁷ The second element, that the defendant's belief be reasonable, requires that the jury make an objective determination by considering all the facts and circumstances as they appeared to the defendant at the time of the killing.²⁸ This injection of an objective evaluation precludes a defendant from successfully asserting perfect self-defense based only on an honest but unreasonable belief.

The evaluation of the reasonableness of a defendant's actions often hinges upon the "imminence" of the threat to the defendant.²⁹ The requirement that the attack be imminent is a sensible one, which ensures that killing the attacker is used only as a last resort.³⁰ The definition of imminence a jurisdiction adopts may limit or broaden the scope of events and circumstances the jury is permitted to consider in evaluating the reasonableness of a defendant's actions.³¹

trolling factor) (citing TEX. PENAL CODE ANN. §§ 9.31(a), 9.32(3) (Vernon 1974)), *rev'd on other grounds*, 756 S.W.2d 309 (Tex. Crim. App. 1988); *State v. Allery*, 101 Wash. 2d 591, 594-95, 682 P.2d 312, 314 (1984) (jury must consider self-defense "in light of all circumstances known to the defendant" and from "defendant's point of view as conditions appeared to her at time of the killing").

27. *State v. Webster*, 324 N.C. 385, 392, 378 S.E.2d 748, 753 (1989) (stressing the importance of evidence tending to show defendant killed his victim with the subjective belief that it was necessary to do so to prevent his own death or bodily harm); *see also State v. Spaulding*, 298 N.C. 149, 159, 257 S.E.2d 391, 397 (1979) (finding prejudicial error in exclusion of testimony that defendant feared physical harm and knew victim was dangerous); *State v. Miller*, 282 N.C. 633, 642-43, 194 S.E.2d 353, 359 (1973) (finding prejudicial error in exclusion of evidence that defendant believed he was about to be killed); *State v. Hughes*, 82 N.C. App. 724, 728, 348 S.E.2d 147, 150 (1986) (instruction on self-defense required when defendant testified that he feared for his life).

28. *Spaulding*, 298 N.C. at 158, 257 S.E.2d at 396. Courts employing an objective standard require the jury to evaluate the reasonableness of the defendant's actions in light of how a person of ordinary prudence and intelligence would respond under the same circumstances. *State v. Leidholm*, 334 N.W.2d 811, 817 (N.D. 1983); *see also W. LAFAVE & A. SCOTT, supra* note 2, at 455-56 (generally defining objective standard); Buda & Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 23 J. FAM. L. 359, 370-71 (1984) (arguing that application of objective standard deprives battered women of self-defense justification because it fails to consider their unique psychological perspective). Under this view, the jury does not consider the physical and psychological characteristics unique to the accused when evaluating the reasonableness of the accused's beliefs. *Leidholm*, 334 N.W.2d at 817.

29. *See Gappins*, 320 N.C. at 71-73, 357 S.E.2d at 659-60 (court found no evidence of real or apparent necessity because nothing indicated that an attack on defendant was imminent); *State v. Mize*, 316 N.C. 48, 49-50, 340 S.E.2d 439, 440 (1986) (instruction on self-defense not required because eight hours elapsed between initial threat and time defendant sought out victim and shot him; delay indicated that there was no threat of imminent harm); *State v. Wilson*, 304 N.C. 689, 695-96, 285 S.E.2d 804, 808 (1982) (defendant not entitled to instruction on self-defense in light of his admission that he returned to the scene of initial altercation, struck the victim, and shot him in the back; these factors suggested that threat was not imminent); *State v. Norris*, 303 N.C. 526, 528, 279 S.E.2d 570, 572 (1981) (instruction on perfect self-defense warranted because victim struck and knocked defendant to the ground, and defendant shot victim as he was advancing on her again).

30. W. LAFAVE & A. SCOTT, *supra* note 2, at 458-59; *see Norman*, 324 N.C. at 261, 378 S.E.2d at 13.

31. Although there is no all-encompassing definition of "imminent," the *Norman* court suggested that the term is synonymous with "immediate," or "about to [happen]." *Norman*, 324 N.C. at 261, 378 S.E.2d at 13. California courts have taken a similar view, defining "imminent peril" as existing at the exact moment the fatal shot was fired: "immediate and present and not prospective or even in the near future." *People v. Aris*, 215 Cal. App. 3d 1178, 1187, 264 Cal. Rptr. 167, 172 (1989). Other jurisdictions have rejected the assertion that "immediate" and "imminent" are interchangeable terms. In *State v. Hundley*, 236 Kan. 461, 693 P.2d 475 (1985), the Supreme Court of Kansas reversed defendant's conviction of involuntary manslaughter because the term "immediate" rather than "imminent" appeared in the jury instructions, thereby placing "undue emphasis on the

The third element of self-defense requires that the defendant be "without fault in provoking, or engaging in, or continuing a difficulty with another."³² Even when the defendant honestly believes it necessary to kill to avoid his own imminent death, if the initial threat that prompted that fear has subsided or is removed in time from the actual killing, the defendant's actions constitute a new confrontation and render his belief in the need to kill unreasonable.³³ To require the defendant to have "clean hands" follows logically from the classification of perfect self-defense as a justification, because society will not sanction a killing the need for which the defendant created.³⁴

Finally, the fourth element seeks to ensure that the defendant does "not resort to the use of deadly force to protect himself from mere bodily harm or offensive physical contact."³⁵ Only when threatened with a felonious assault is the defendant justified in using deadly force.³⁶ This is not, however, an inflexible rule.³⁷ In North Carolina the rule is qualified in cases involving either multiple assailants or a disparity in strength between the defendant and the victim.³⁸

Although society at large recently has become attuned to the pervasive social problem of domestic violence,³⁹ it has not yet attained a sophisticated un-

immediate action of the deceased, and obliterate[ing] the nature of the buildup of terror and fear which had been systematically created over a long period of time." *Id.* at 468, 693 P.2d at 479; see Mather, *supra* note 2, at 567-68 (discussing *Hundley*). In *State v. Wanrow*, 88 Wash. 2d 221, 559 P.2d 548 (1977), the Washington Supreme Court held that an instruction limiting the jury's inquiry to the time immediately prior to the shooting was erroneous because it restricted the jury's inquiry into the surrounding circumstances. *Id.* at 234-36, 559 P.2d at 555-56. The Model Penal Code's characterization of "imminent" is slightly broader, requiring that force must be exerted against an unlawful attack "on the present occasion." MODEL PENAL CODE § 3.04(1) (1985).

32. *State v. Anderson*, 230 N.C. 54, 56, 51 S.E.2d 895, 897 (1949).

33. *Mize*, 316 N.C. at 53, 340 S.E.2d at 442 (1986). In *Mize*, the victim had been "out to get" defendant earlier in the day. Eight hours later defendant went to the victim's trailer with a shotgun, woke him, and shot him to death. The court found that defendant had become the aggressor and affirmed the trial court's refusal to submit self-defense instructions to the jury. *Id.*; see also *Wilson*, 304 N.C. at 695-96, 285 S.E.2d at 808 (1982) (defendant not entitled to assert self-defense after evidence showed that he and his victim engaged in a fight after which victim threatened to kill him. Defendant then went home, got a gun, returned to the scene of the fight, and shot the victim in the back).

34. For a discussion of the distinction between justification and excuse, see *supra* note 2 and *infra* notes 113-15 and accompanying text.

35. *State v. Hunter*, 315 N.C. 371, 373, 338 S.E.2d 99, 102 (1986) (citing *State v. Clay*, 297 N.C. 555, 563, 256 S.E.2d 176, 182 (1979), *overruled on other grounds*, *State v. Davis*, 305 N.C. 400, 290 S.E.2d 574 (1982)). North Carolina draws a distinction, based on the amount of force allowed, between the rights of self-defense in response to felonious assaults and misdemeanor assaults. *Id.* at 373, 338 S.E.2d at 101. A felonious assault involves an intent to kill or to inflict serious harm, coupled with use of a deadly weapon. N.C. GEN. STAT. § 14-32 (1986).

36. *Hunter*, 315 N.C. at 373, 338 S.E.2d at 102.

37. Traditionally the deadly force requirement presupposed two equally capable men fighting each other. Mather, *supra* note 2, at 565. Against a woman, however, the attacks of an unarmed man may be deadly force. *Id.* Therefore, the modern trend is to consider the "respective size of the parties, their sex, the particularly violent nature of the attack, and the attacker's reputation for violence or violent history." *Id.*

38. *State v. Pearson*, 288 N.C. 34, 40, 215 S.E.2d 598, 603 (1975).

39. See Mather, *supra* note 2, at 545-46. Statistics indicate that each year two million to forty million women endure beatings at the hands of their spouses or boyfriends. Kinports, *Defending Battered Women's Self-Defense Claims*, 67 OR. L. REV. 393, 393 (1988) (citing A. JONES, WOMEN WHO KILL 283 (1980) (between one-fourth and one-half of women living with men will be victims of violence); Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 624-25 (1980) (estimates one-third to one-half of all women will be

derstanding of the psychology of the battered woman, the batterer, or the dynamics of the abusive relationship.⁴⁰ Many people have difficulty understanding why an adult woman does not leave the abusive relationship, involve the police, or solicit help from friends or family.⁴¹ A battered woman's failure to avail herself of these apparent solutions also is beyond the understanding of the average juror.⁴² The resolution of these issues is just as complex as the presence of wife-beating in society is ingrained.⁴³ Therefore, expert testimony on battered woman syndrome often is crucial to a successful assertion of self-defense.⁴⁴

Commentators have identified several factors that influence a battered wo-

victims); Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267, 273 (1985) (each year between one-fifth and one-tenth of women involved intimately with men will be abused)). Researchers estimate that at least one battering incident will occur in one-half of all marriages. L. WALKER, *supra* note 3, at ix.

40. Mather, *supra* note 2, at 546.

41. *Id.* at 547.

42. For a discussion of the admissibility of expert testimony to assist juries in understanding battered woman syndrome, see *infra* note 44 and accompanying text.

43. As society shifted from a matriarchal to a patriarchal orientation, attitudes toward women changed; by the Middle Ages wife beating had become an accepted practice. Mather, *supra* note 2, at 547 (citing Davidson, *Wifebeating: A Recurring Phenomenon Throughout History*, in BATTERED WOMEN: A PSYCHOLOGICAL STUDY OF DOMESTIC VIOLENCE 12-14 (M. Roy ed. 1977)). Later, England and the United States condoned physical violence if it satisfied the "Rule of Thumb." *Id.* at 547-48; see, e.g., State v. Rhodes, 61 N.C. (Phil. Law) 453 (1868) (court declined to punish husband for beating wife because instrument employed was smaller in width than his thumb and because court wished to avoid interfering in marital relationship).

44. Mather, *supra* note 2, at 546-47. Although courts are not unanimous in allowing expert testimony concerning battered woman syndrome, they have increasingly permitted it. *Id.* at 574-75; see Note, *A Trend Emerges: A State Survey on the Admissibility of Expert Testimony Concerning the Battered Woman Syndrome*, 25 J. FAM. L. 373 (1986).

A majority of courts addressing the issue has recognized that expert testimony on battered woman syndrome can explain its psychological basis. State v. Steele, 359 S.E.2d 558, 564 (W. Va. 1987); see Terry v. State, 467 So. 2d 761, 763 (Fla. Dist. Ct. App. 1985); Hawthorne v. State, 408 So. 2d 801, 806-07 (Fla. Dist. Ct. App. 1982); Strong v. State, 251 Ga. 540, 541, 307 S.E.2d 912, 913 (1983); Smith v. State, 247 Ga. 612, 619, 277 S.E.2d 678, 683 (1981); People v. Minnis, 118 Ill. App. 3d 345, 357-58, 455 N.E.2d 209, 217 (1983); State v. Stewart, 243 Kan. 639, 646, 763 P.2d 572, 576 (1988); State v. Hodges, 239 Kan. 63, 71, 716 P.2d 563, 570 (1986); Commonwealth v. Rose, 725 S.W.2d 588, 591 (Ky. 1987); State v. Anaya, 438 A.2d 892, 894 (Me. 1981); State v. Baker, 120 N.H. 773, 775-76, 424 A.2d 171, 172-73 (1980); State v. Kelly, 97 N.J. 178, 202, 478 A.2d 364, 381 (1984); State v. Gallegos, 104 N.M. 247, 253, 719 P.2d 1268, 1274 (1986); People v. Torres, 128 Misc. 2d 129, 134-35, 488 N.Y.S.2d 358, 362-63 (1985); State v. Leidholm, 334 N.W.2d 811, 819 (N.D. 1983); State v. Thomas, 13 Ohio App. 3d 211, 214, 468 N.E.2d 763, 765 (1983); State v. Hill, 287 S.C. 398, 399, 339 S.E.2d 121, 122 (1986); State v. Kelly, 102 Wash. 2d 188, 195-96, 685 P.2d 564, 570 (1984); State v. Allery, 101 Wash. 2d 591, 597, 682 P.2d 312, 315-16 (1984); State v. Felton, 110 Wis. 2d 485, 494-95, 329 N.W.2d 161, 165-67 (1983). Two recent cases allowing such expert testimony are State v. Hennum, 441 N.W.2d 793, 798-99 (Minn. 1989), and People v. Aris, 215 Cal. App. 3d 1178, 1198-1200, 264 Cal. Rptr. 167, 179-81 (1989). The *Hennum* court, however, limited use of the testimony to a general description of the syndrome and its characteristics, and expressly prohibited testimony that the defendant, in fact, suffered from the syndrome. *Hennum*, 441 N.W.2d at 799. Such a determination, held the court, is exclusively within the province of the jury. *Id.* In *Aris*, the court held that expert opinion is relevant only to prove an honest belief, not to prove reasonableness of the belief. *Aris*, 215 Cal. App. 2d at 1199, 264 Cal. Rptr. at 179-80.

Cases disallowing expert testimony include *Ibn-Tamas v. United States*, 455 A.2d 893, 894 (D.C. 1983); *Mullis v. State*, 248 Ga. 338, 338-39, 282 S.E.2d 334, 337 (1981); *People v. White*, 90 Ill. App. 3d 1067, 1071-73, 414 N.E.2d 196, 200-01 (1980); *Fultz v. State*, 439 N.E.2d 659, 662 (Ind. Ct. App. 1982); *State v. Martin*, 666 S.W.2d 895, 899 (Mo. Ct. App. 1984); *Felder v. State*, 683 S.W.2d 565, 592 (Tex. App. Ct. 1985), *rev'd*, 756 S.W.2d 309 (Tex. Crim. App. 1988); *Buhrle v. State*, 627 P.2d 1374, 1377-78 (Wyo. 1981). For a discussion of the criticisms of admitting expert testimony on battered woman syndrome, see *infra* note 53.

man's decision to remain in an abusive relationship.⁴⁵ The woman may believe she is not able to escape.⁴⁶ Often the woman has tried to leave, only to have her husband find her and force her to return.⁴⁷ She may fear that if she leaves, her husband will kill her, their children, or anyone who helps her escape.⁴⁸ The abusive husband often isolates his wife, keeping her from making friends or even leaving the house; therefore, the woman has no one to support her if she does decide to leave.⁴⁹ In many cases, the battered woman's prior attempts to escape have been met with police who are reluctant to intervene,⁵⁰ prosecutors who discourage the pursuit of formal charges, and judges who impose lenient sentences.⁵¹ Finally, despite the violence, the woman loves her husband, is loyal to him, and believes he needs her.⁵²

Perhaps the best known and most frequently cited explanation of abusive relationships is Dr. Lenore Walker's cycle theory of violence.⁵³ According to Dr. Walker's theory, the abuse cycle consists of three phases: tension building,

45. These factors include financial dependence, see S. SCHECHTER, *WOMEN AND MALE VIOLENCE* 1-2, 53-58 (1982); fear of losing custody of children, see A. BROWNE, *WHEN BATTERED WOMEN KILL* 55-74 (1987); fear of child abuse, see *id.* at 94; humiliation, see Moore, *Editor's Introduction to L. WALKER, supra* note 3, at 7, 13-14 (D. Moore ed. 1979); and genuine hope that the abuse will end, see Geller, *Conjoint Therapy: Staff Training and Treatment of the Abuser and the Abused*, in *THE ABUSIVE PARTNER: AN ANALYSIS OF DOMESTIC BATTERING* 198-99 (M. Roy ed. 1982).

46. See *infra* notes 61-63 and accompanying text.

47. See, e.g., A. JONES, *WOMEN WHO KILL* 298-99 (1980).

48. L. WALKER, *THE BATTERED WOMAN SYNDROME* 42 (1984) ("Women commonly reported phrases such as 'If I can't have you, no one will'; 'If you leave, I'll find you wherever you go'; 'Just do that and you'll see how mean I can really be.' Threats of bodily mutilation such as cutting up her face, sewing up her vagina, breaking her kneecaps, and knocking her unconscious also served to terrify women.") For examples of such cases, see *State v. Gallegos*, 104 N.M. 247, 251, 719 P.2d 1268, 1272 (Ct. App. 1986) (defendant's husband threatened to shoot her if she left); *Ibn-Tamas v. United States*, 407 A.2d 626, 629 (D.C. 1979) (defendant's husband threatened to fracture her skull if she tried to leave or divorce him).

49. Kinports, *supra* note 39, at 402.

50. Howard, *Husband-Wife Homicide: An Essay from a Family Law Perspective*, 49 *LAW & CONTEMP. PROBS.* 63, at 69-70 (1986) (stating that in majority of spousal homicide cases the police had been called previously to the home).

51. Kinports, *supra* note 38, at 403-04; see, e.g., *People v. Powell*, 102 Misc. 2d 775, 777, 424 N.Y.S.2d 626, 628 (1980) (defendant's husband repeatedly ignored court-issued protective orders), *aff'd*, 83 App. Div. 2d 719, 442 N.Y.S.2d 695 (1981); *State v. Allery*, 101 Wash. 2d 591, 593, 682 P.2d 312, 313 (1984) (defendant's husband entered defendant's home in violation of restraining orders).

52. Mather, *supra* note 2, at 553 (citing A. BROWNE, *supra* note 45, at 141-42 (1987)).

53. *Id.*; see L. WALKER, *supra* note 3, at 55-70. Many courts have adopted Walker's theories. See *supra* note 44 and cases cited therein. Walker's explanation of battered woman syndrome and the cycle theory of violence, however, is not universally accepted. See Kinports, *supra* note 39, at 407. Courts and commentators that have questioned the validity of Walker's research point to lack of a control group, insufficient sample size, and interviewer bias. See, e.g., Note, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619, 636-43 (1986) (arguing against admission of expert testimony on battered woman syndrome); Note, *Does Plight Make Right: The Battered Woman Syndrome, Expert Testimony and the Law of Self-Defense*, 62 IND. L.J. 1253, 1263-67 (1987) (arguing against admissibility because battered woman syndrome is not beyond the ken of the average juror and because Walker's theories are of questionable validity); see also *supra* note 44 (citing cases disallowing expert testimony on battered woman syndrome). Rather than render defendants' expert testimony inadmissible, one commentator suggested that the methodological criticisms of Walker's theory be disclosed at trial to assist the jury in determining the weight to be given expert testimony on battered woman syndrome. Kinports, *supra* note 39, at 407.

acute battering, and contrition.⁵⁴ During the tension building phase, usually the longest of the cycle, minor battering incidents occur and escalate in severity over time.⁵⁵ The most severe beatings occur during the second phase, which is distinguished by the batterer's loss of control and the unpredictable timing of beatings.⁵⁶ Finally, during the third phase the batterer typically expresses tremendous remorse, promises to stop the violence, and acts in a loving and kind way.⁵⁷

Two additional psychological theories, intermittent reinforcement and learned helplessness, offer some explanation of the dynamics present in battering relationships.⁵⁸ The intermittent reinforcement theory posits that when reinforcement of certain behavior occurs at irregular and unpredictable intervals, that behavior becomes extremely difficult to modify or extinguish.⁵⁹ Applying this concept to the abusive relationship, intermittent periods of contrition serve as positive reinforcement for the woman, encouraging her to remain in the relationship and making it very difficult for her to extricate herself from the situation.⁶⁰ The second theory, learned helplessness, describes a phenomenon first observed in animals: those animals that are subjected continuously to situations over which they have no control ultimately lose the ability to respond even after experimenters have restored their control.⁶¹ Similarly, a battered woman may lose her ability to escape from the violence because she perceives herself to be powerless to control her situation.⁶² As a result, when opportunities to escape arise, she may not recognize them or may not be able to take advantage of them.⁶³

Against this psychological and social backdrop the North Carolina Court of Appeals and the North Carolina Supreme Court addressed the tension between the traditional rules of self-defense and the special case of the battered woman. The two courts reached dramatically different results.

In the North Carolina Court of Appeals, Mrs. Norman argued that the trial

54. See L. WALKER, *supra* note 3, at 55; Hilberman, *Overview: The "Wife Beater's Wife" Reconsidered*, 137 AM. J. PSYCHIATRY 1336, 1339 (1980).

55. L. WALKER, *supra* note 3, at 56-59. This phase may last as long as 10 years. *Id.* at 58.

56. *Id.* at 59-61. This is the shortest phase, ranging anywhere from two to twenty-four hours. *Id.* at 60.

57. *Id.* at 65-66. In some cases, however, the third phase either is not present or disappears over time. See Walker, *The Battered Woman Syndrome Study*, in *THE DARK SIDE OF FAMILIES: CURRENT FAMILY VIOLENCE RESEARCH* 31, 44 (D. Finkelhor & R. Gelles eds. 1983).

58. Mather, *supra* note 2, at 553-54.

59. *Id.* at 554 (citing Geller, *supra* note 45, at 198-99).

60. *Id.*

61. *Id.* Lenore Walker's concept of "learned helplessness" is based on experiments conducted by Martin Seligman. See L. WALKER, *supra* note 48, at 86. During the experiments dogs received electrical shocks at random intervals. The dogs soon learned that they could exert no control over the pain and ceased trying to escape. Even when the dogs regained the ability to escape from the pain, researchers had to retrain the dogs to avoid the shocks voluntarily by repeatedly dragging them from their cages until they learned to escape on their own. See M. SELIGMAN, *HELPLESSNESS: ON DEPRESSION, DEVELOPMENT & DEATH* 23-25 (1975).

62. Mather, *supra* note 2, at 554.

63. *Id.* (citing A. BROWNE, *supra* note 45, at 122-27).

judge erred by failing to submit an instruction on self-defense to the jury.⁶⁴ The court of appeals held that "with the battered spouse there can be . . . an unlawful killing of a passive victim that does not preclude the defense of perfect self-defense"⁶⁵ and ordered a new trial.⁶⁶ The court further directed that the jury consider evidence of battered woman syndrome only as some evidence⁶⁷ and evaluate it in conjunction with all other evidence to determine the existence of a reasonable doubt as to the unlawfulness of the defendant's conduct.⁶⁸ In reaching this conclusion, the court claimed to have applied a hybrid standard of reasonableness to the defendant's actions, employing both subjective and objective measures.⁶⁹ Closer inspection, however, reveals that the court based its decision

64. *State v. Norman*, 89 N.C. App. 384, 385, 366 S.E.2d 586, 587 (1988), *rev'd*, 324 N.C. 253, 378 S.E.2d 8 (1989).

65. *Id.* at 393, 366 S.E.2d at 592. For a discussion of the distinction between perfect and imperfect self-defense, see *supra* note 2. The court of appeals found no error in the trial court's refusal to instruct the jury on imperfect self-defense. *Id.* at 391, 366 S.E.2d at 590. However, by stating that imperfect self-defense requires that the act be committed without murderous intent, the court appears to have misinterpreted the definition of imperfect self-defense established by prior case law. North Carolina law defines imperfect self-defense as follows:

[I]f defendant believed it was necessary to kill the deceased in order to save herself from death or great bodily harm, and if defendant's belief was reasonable in that the circumstances as they appeared to her at the time were sufficient to create such a belief in the mind of a person of ordinary firmness, but defendant, although without murderous intent, was the aggressor in bringing on the difficulty, or defendant used excessive force, the defendant under those circumstances has only the imperfect right of self-defense, having lost the benefit of perfect self-defense, and is guilty at least of voluntary manslaughter.

State v. Wilson, 304 N.C. 689, 695, 285 S.E.2d 804, 808 (1982) (quoting *State v. Norris*, 303 N.C. 526, 530, 279 S.E.2d 570, 573 (1981)). The court of appeals' statement that if Mrs. Norman did not intend to kill her husband, then the first requirement of self-defense, that she believe it necessary to kill him, would not be satisfied, erroneously interprets the phrase "although without murderous intent" to modify all of the elements of imperfect self-defense. *State v. Norman*, 89 N.C. App. 384, 391, 366 S.E.2d 586, 590 (1988), *rev'd*, 324 N.C. 253, 378 S.E.2d 8 (1989). Correctly viewed, that phrase is applicable only to a situation in which the defendant is the initial aggressor. See *State v. Mize*, 316 N.C. 48, 53, 340 S.E.2d 439, 441-42 (1986). In that case, if the defendant initiated the confrontation with murderous intent, then regardless of the existence of the first two elements, imperfect self-defense is unavailable. *Id.* Assuming the presence of the first two elements, only if the evidence established that Mrs. Norman was the initial aggressor and with murderous intent had sought out her husband, would the presence of the murderous intent preclude imperfect self-defense. Accordingly, the premise upon which the court of appeals based its rejection of imperfect self-defense is flawed.

The North Carolina Supreme Court based its rejection of imperfect self-defense on the absence of evidence supporting a reasonable belief in imminent threat, but may have recognized the court of appeals' erroneous interpretation of "murderous intent." The supreme court stated, however, that even assuming that Mrs. Norris was entitled to an instruction on imperfect self-defense, the error was harmless. The supreme court thus limited its discussion to perfect self-defense. *Norman*, 324 N.C. at 260, 378 S.E.2d at 12-13.

66. *State v. Norman*, 89 N.C. App. 384, 394, 366 S.E.2d 586, 592 (1988), *rev'd*, 324 N.C. 253, 378 S.E.2d 8 (1989).

67. *Id.* This directive by the court of appeals appears to ensure that existence of battered woman syndrome would not in and of itself justify the killing of the abusive spouse. This view accords with other jurisdictions. See, e.g., *State v. Leidholm*, 334 N.W.2d 811, 820 n.8 (N.D. 1983) ("the law of self-defense will not . . . accommodate a theory that the existence of battered woman syndrome . . . operates in and of itself to justify or excuse a homicide."); *State v. Kelly*, 33 Wash. App. 541, 544, 655 P.2d 1202, 1203 (1982) ("The existence of the syndrome . . . does not of itself establish the legal right of the wife to kill the husband."). For a general discussion of this point, see Mather, *supra* note 2, at 571-73.

68. *State v. Norman*, 89 N.C. App. 384, 394, 366 S.E.2d 586, 592 (1988), *rev'd*, 324 N.C. 253, 378 S.E.2d 8 (1989).

69. *Id.* at 391, 366 S.E.2d at 590. The court of appeals stated that "an examination of the

on evidence purely subjective in nature.

The first element of self-defense, that the defendant believe in the need to use force, calls for a subjective determination.⁷⁰ The court of appeals found that Mrs. Norman's testimony regarding her belief that her husband would kill her, the evidence of past physical abuse, and expert testimony would permit a jury to find that Mrs. Norman had an honest belief in an imminent threat that necessitated her actions.⁷¹

The critical flaw in the court of appeals' analysis lies in its evaluation of the second element of self-defense, that the defendant's belief be reasonable. While stating that this element requires an objective measure, the court based its finding that sufficient evidence of reasonableness existed on defendant's fear of more severe beatings, inability to withdraw from the volatile situation, and resulting vulnerability to her husband.⁷² These factors are unique to the defendant as a battered woman and cannot be generalized to the reasonable person. There is no practical difference between the character of this evidence and that accepted by the court in satisfaction of the subjective element of self-defense. The court, in effect, employed a "reasonable battered woman" standard.⁷³

Again relying on evidence of battered woman syndrome, the court stated that the jury reasonably could have found that "decendent's sleep was but a momentary hiatus in a continuous reign of terror by the decendent, [and] that defendant merely took advantage of her first opportunity to protect herself . . ." thereby satisfying the third element of self-defense, that the defendant not be the aggressor.⁷⁴ The court concluded that it is not necessary for "a battered person [to] wait until a deadly attack occurs," or for the victim actually to be "attacking or threatening to attack at the very moment defendant commits" the killing for the self-defense justification to apply.⁷⁵ In fact, the defendant is *least* able to protect herself during the violent phase, which is when the traditional rules of self-defense would require that she act.⁷⁶ It is this interpretation of the "imminence" requirement that figures prominently in the North Carolina Supreme Court's decision to reverse the court of appeals' decision and to reinstate Mrs.

elements of perfect self-defense reveals that both subjective and objective standards are to be applied in making the crucial determinations." *Id.* For a discussion of the elements of self-defense, see *supra* notes 2, 25-38 and accompanying texts.

70. *Norman*, 89 N.C. App. at 391-92, 366 S.E.2d at 590.

71. *Id.*

72. *Id.* at 392-93, 366 S.E.2d at 591.

73. See generally Kinports, *supra* note 39, at 412-17 (arguing that jury should be instructed to acquit defendant if a reasonable battered woman, as opposed to a reasonable person, would have feared her husband under the same circumstances). For a discussion of use of "reasonable battered woman" standard as alternative to "reasonable person" to remedy the plight of battered women, see *infra* notes 103-19 and accompanying text.

74. *Norman*, 89 N.C. App. at 394, 366 S.E.2d at 592. The court only cursorily treated the fourth element, that defendant not use excessive force, simply finding that the expert testimony and other evidence would permit the inference that the force used by Mrs. Norman was not excessive. *Id.* The North Carolina Supreme Court treated this element very differently. See *infra* notes 78-86 and accompanying text.

75. *Norman*, 89 N.C. App. at 393, 366 S.E.2d at 592.

76. *Id.* (citing *State v. Kelly*, 97 N.J. 178, 220 n.23, 478 A.2d 364, 385 n.23 (1984)).

Norman's conviction.⁷⁷

The North Carolina Supreme Court rejected the court of appeals' interpretation of "imminence" as expansive,⁷⁸ and instead took the position that "immediate" and "imminent" are synonymous.⁷⁹ This narrow interpretation of imminence provides the basis for the court's conclusion that Mrs. Norman lacked *any* belief—reasonable or otherwise—that an imminent threat of death or great bodily harm confronted her, and thereby failed to satisfy either of the first two elements of perfect self-defense.⁸⁰ First the court stated that Mrs. Norman did not face an "instantaneous choice between killing her husband or being killed or seriously injured."⁸¹ Instead the evidence supported the contention that Mrs. Norman had adequate opportunity to avail herself of other means to prevent further abuse by her husband.⁸² Further, there was "no action underway by the decedent" either at the time of or "immediately prior to his falling asleep."⁸³ As such, the court found the record devoid of evidence that Mrs. Norman had reasonable grounds to believe in an imminent attack.⁸⁴ Next, the court concluded that testimony of the defendant and her two expert witnesses, though illustrative of her fear of future beatings and belief that death was "inevitable," failed to demonstrate any belief of an "imminent" threat.⁸⁵ Therefore, there was no evidence from which a jury could find that Mrs. Norman honestly believed in the threat of imminent death or great bodily harm.⁸⁶ This is a case of semantics clouding substance; the evidence, considered in aggregate, clearly supports an inference that Mrs. Norman believed in an imminent threat. A finding of a *belief* in an imminent threat, however, would not have changed the result, because the belief would still, to the court, have been unreasonable.

Not only did the court find no evidence to support a finding of a belief in an imminent threat, but it also concluded that even if defendant had demonstrated

77. See *infra* notes 78-86 and accompanying text.

78. *Norman*, 324 N.C. at 264, 378 S.E.2d at 15.

79. *Id.* at 261, 378 S.E.2d at 13. For a discussion of the various interpretations of "imminent," see *supra* note 31 and accompanying text.

80. *Norman*, 324 N.C. at 261-62, 378 S.E.2d at 13-14.

81. *Id.* at 261, 378 S.E.2d at 14.

82. *Id.* at 261-62, 378 S.E.2d at 13. In reaching this conclusion the majority pointed to undisputed evidence that Mrs. Norman left her sleeping husband, "walked to her mother's house, returned with the pistol, fixed the pistol after it jammed and then shot her husband three times in the back of the head." *Id.* at 261, 378 S.E.2d at 13.

83. *Id.* at 262, 378 S.E.2d at 13.

84. *Id.*

85. *Id.* at 263, 378 S.E.2d at 14. The psychiatrist and psychologist both opined that killing her husband "appeared reasonably necessary" to Mrs. Norman at the time of the killing. *Id.* This testimony, however, did not establish Mrs. Norman's fear of imminent death or great bodily harm. *Id.* Dr. Tyson testified that Mrs. Norman "believed herself to be doomed . . . to a life of the worst kind of torture and abuse, degradation that she had experienced over the years in a progressive way; that it would only get worse, and that death was inevitable." *Id.* Although Dr. Tyson's testimony showed Mrs. Norman's general fear, it established only her speculative belief concerning the future. *Id.*

Mrs. Norman's testimony was similarly inadequate. She testified that she believed the beating would be "worse than [it] had ever been" and that "[Mr. Norman] would kill [her] if he got a chance." *Id.* The court found this testimony insufficient to establish a belief in and fear of imminent death or great bodily harm at the time of the killing. *Id.*

86. *Id.* at 261, 378 S.E.2d at 13.

a belief, by returning home and shooting her sleeping husband, Mrs. Norman initiated a new confrontation, thereby rendering any such belief unreasonable.⁸⁷ Finally, the court recognized the tremendous abuse Mrs. Norman endured, but pointed to the lack of evidence that the abuse ever before had reached the degree necessary to justify the use of deadly force; therefore, the use of deadly force was excessive.⁸⁸

According to the majority, the expanded definition of "imminent" proposed by the court of appeals would work a substantial change on the law of self-defense, encourage self-help, and "categorically legalize the opportune killing of abusive husbands by their wives solely on the basis of the wives' testimony concerning their subjective speculation as to the probability of future felonious assaults by their husbands."⁸⁹ Such a result would undermine the purpose of the imminence requirement, which is to ensure that deadly force is used only as a "last resort in the exercise of the inherent right of self-preservation."⁹⁰ Moreover, the court argued that such relaxed self-defense requirements could, in theory, result in the use of the self-defense justification in any situation in which a defendant testified as to his subjective belief that a killing was necessary in response to a threat.⁹¹

Justice Martin penned a vigorous dissent.⁹² He first took issue with the majority's concern over the important role the testimony of the battered woman would assume by reminding the majority that cases involving battered women are not the only situations that pose threats of invented evidence.⁹³ Justice Martin criticized the majority's fear of allowing an expansion of "'our law of self-defense beyond the limits of immediacy and necessity'" for mischaracterizing the result sought by defendant.⁹⁴ Acceptance of defendant's argument, he contended, would not result in an expansion or alteration of existing law, but in the correct application of the traditional rules of self-defense.⁹⁵ The dissent stated that evaluation of the "imminence" requirement must answer the question "not whether the threat was *in fact* imminent, but whether the defendant's belief in the impending nature of the threat, given the circumstances as she saw them,

87. *Id.* at 262, 378 S.E.2d at 13-14.

88. *Id.* at 265, 378 S.E.2d at 15. See *supra* notes 35-38 and accompanying text for a discussion of the requirement that defendant not use excessive force.

89. *Norman*, 324 N.C. at 265, 378 S.E.2d at 15.

90. *Id.* at 261, 378 S.E.2d at 13.

91. *Id.* at 266-67, 378 S.E.2d at 16.

92. *Id.* (Martin, J., dissenting).

93. *Id.* (Martin, J., dissenting). According to Justice Martin, any case involving an assertion of self-defense poses the risk of false evidence. *Id.* (Martin, J., dissenting). Similarly, the state's task of rebutting a defendant's evidence is difficult in *all* self-defense cases in which the only other witness is deceased. *Id.* (Martin, J., dissenting). In addition, Justice Martin pointed to the luxury in this case, not found often in self-defense cases, of having several other witnesses corroborate defendant's testimony concerning the history of severe physical abuse and those events that occurred over the three days prior to the killing. These witnesses included defendant's mother, daughter, and daughter's boyfriend, as well as deputies and a friend of the decedent. *Id.* at 271-73, 378 S.E.2d at 19-20 (Martin, J., dissenting). He further noted that determining the credibility of and weight of evidence is solely within the province of the jury. *Id.* at 267, 378 S.E.2d at 17 (Martin, J., dissenting).

94. *Id.* at 267, 378 S.E.2d at 16 (Martin, J., dissenting).

95. *Id.* at 267, 378 S.E.2d at 16-17. (Martin, J., dissenting).

was reasonable in the mind of a person of ordinary firmness."⁹⁶ Based on testimony tending to establish the presence of battered woman syndrome, Justice Martin found that the battered spouse's fear that "'one day her husband [would] kill her in the course of a beating'"⁹⁷ created an honest belief that "danger [was] constantly 'immediate.'"⁹⁸ According to Justice Martin, this state of mind, unique to battered woman syndrome, serves not only to distinguish the reasonableness of Judy Norman's perception of imminence from that of the defendants in the case relied on by the majority, but also to satisfy the first two elements of the self-defense justification.⁹⁹

The dissent's reliance on the *Model Penal Code* highlights the weak link in Justice Martin's argument. While contending that his interpretation of imminence would not deviate from the objective interpretation traditionally employed in North Carolina, Justice Martin bases his suggested interpretation upon a standard considered subjective in nature by commentators.¹⁰⁰ By requiring the jury to assume the unique perceptions of the defendant, Justice Martin would in effect transform the "person of ordinary firmness" into the "reasonable battered woman."¹⁰¹ Contrary to Justice Martin's assertions, such a standard clearly would effect a change in the traditional application of the rules of self-defense.¹⁰²

Accepting the North Carolina Supreme Court's decision as consistent with

96. *Id.* at 271, 378 S.E.2d at 19 (Martin, J., dissenting). Justice Martin found support for this interpretation of "imminence" in a comment to the Model Penal Code: "[t]he actor must believe that his defensive action is immediately necessary and the unlawful force against which he defends must be force that he apprehends will be used on the present occasion, but he need not apprehend that it will be immediately used." *Id.* at 271 n.1, 378 S.E.2d at 19 n.1 (Martin, J., dissenting) (quoting MODEL PENAL CODE § 3.04 comment (ALI 1985)).

97. *Id.* at 270-71, 378 S.E.2d at 18-19 (Martin, J., dissenting) (quoting Note, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 HASTINGS L.J. 895, 928-29 (1981)).

98. *Id.*

99. *Id.* at 270, 378 S.E.2d at 18 (Martin, J., dissenting). Justice Martin's reliance on evidence of battered woman syndrome to determine both the subjective belief of defendant and objective reasonableness of her actions raises an interesting question: to which elements of self-defense is expert testimony on battered woman syndrome relevant? While the majority opinion did not address the admissibility of battered woman syndrome, Rule 704 of the North Carolina Rules of Evidence, which allows opinion testimony addressing an ultimate issue, would appear to permit testimony as to both the defendant's perception of imminence and the reasonableness of that perception. N.C.R. EVID. 704. Other courts employing an objective standard of reasonableness have adopted this view. See, e.g., *State v. Stewart*, 243 Kan. 639, 763 P.2d 572 (1988) (defendant acquitted of first degree murder on testimony that defendant suffered from battered woman syndrome and had a "'really grave lethal situation'"). But see *People v. Aris*, 215 Cal. App. 3d 1178, 1197-98, 264 Cal. Rptr. 167, 179-80 (1989) (holding that expert testimony as to defendant's state of mind is not relevant to the reasonableness of defendant's actions; expert's explanation of battered woman syndrome as a basis for defendant's perceptions is admissible as long as it does not express opinions on the "ultimate issue that defendant did or did not have" required mental state for the crime). For a general discussion of the admissibility of evidence of battered woman syndrome, see *supra* note 43.

100. See, e.g., W. LAFAYE AND A. SCOTT, *supra* note 2, at 458 n.29, 459 n.36.

101. See Kinports, *supra* note 39, at 415. See *infra* notes 103-19 and accompanying text for a discussion of a "reasonable battered woman" standard as an alternative to the current standard.

102. Justice Martin also found evidence sufficient to support a finding that Mrs. Norman was not the aggressor and did not use excessive force. *Norman*, 324 N.C. at 274-75, 378 S.E.2d at 21 (Martin, J., dissenting). Again relying on evidence of battered woman syndrome, he stated that a jury could view the incident that precipitated the killing as a "continuing assault," which from Mrs. Norman's perspective did not end when her husband fell asleep. *Id.* The absence of any such "continuing assault" served to distinguish this case from the case relied on by the majority. *Id.* at 274, 378 S.E.2d at 21 (Martin, J., dissenting). Finally, Justice Martin argued that testimony of Mrs. Norman's friends and family that demonstrated her inability to strike back against her husband

prior case law on self-defense does not necessitate a conclusion that such a result is inevitable or desirable. The decision, however, does illustrate the need to examine the feasibility of changes in the existing law of self-defense or alternative defenses that some commentators suggest would render a more equitable result to women in situations such as that which confronted Mrs. Norman.

Allowing the jury to measure the defendant's conduct against that of the "reasonable battered woman" is one alternative to the current reasonable person standard. Characterizing the subjective and objective standards of reasonableness as inflexible polar opposites denies the degree to which they sometimes merge and places undue emphasis on formal rhetoric as opposed to the particular circumstances underlying each case.¹⁰³ Instead, commentators suggest that these standards be viewed as representing different points on a continuum with the crucial issue being not whether, but to what extent a jury may consider the individual characteristics or circumstances of the defendant.¹⁰⁴ Including *all* of the defendant's characteristics and experiences would, in effect require only an honest belief in imminent danger.¹⁰⁵ Therefore, the question is which characteristics should be considered when determining reasonableness.¹⁰⁶

In light of the fact that even those courts employing the least expansive concept of the reasonable person still consider some of the defendant's characteristics,¹⁰⁷ a strong argument exists that the jury should evaluate the defendant's actions under a "reasonable battered woman" standard.¹⁰⁸ Only then can a jury fully evaluate the reasonableness of the defendant's actions.¹⁰⁹ Proponents argue that under this approach, the battered woman who kills in a non-confrontational setting is entitled to assert self-defense.¹¹⁰

Criticisms of this approach abound. Some commentators consider this standard oxymoronic: a woman suffering from battered woman syndrome can-

would allow a jury to infer that it reasonably appeared to her that killing Mr. Norman was the only means available to protect herself. *Id.* at 275, 378 S.E.2d at 21 (Martin, J., dissenting).

103. Note, *The Battered Woman Syndrome and Self Defense: A Legal and Empirical Dissent*, *supra* note 53, at 643.

104. See *id.*; Kinports, *supra* note 39, at 411, 413. The jury is not compelled to create a hypothetical person and then speculate as to how that person would have responded in the defendant's shoes. *Id.* at 413. Unless the jury takes into account the defendant's characteristics and circumstances surrounding the killing, it cannot determine what a reasonable person would have done in the same circumstances. *Id.*; see Kelman, *Interpretive Construction in the Substantive Criminal Law*, 33 STAN. L. REV. 591, 658-60 (1981) (arguing that "standard-like particularization" imposes vagueness on a determination of reasonableness).

105. Kinports, *supra* note 38, at 413.

106. *Id.* at 413.

107. *Id.* at 413-15. For example, juries may now consider evidence of disparity in size and strength between the defendant and the attacker, and evidence of the defendant's physical handicap. *Id.* Further, evidence of prior threats or acts of violence is admissible to support the reasonableness of defendants' fear of imminent harm. *Id.* North Carolina cases are in accord with this view. See, e.g., *State v. Webster*, 324 N.C. 385, 392-93, 378 S.E.2d 748, 753 (1989) (defendant allowed to testify as to his heart condition, kidney failure and release from the hospital only two days before the killing); *State v. Spaulding*, 298 N.C. 156, 158, 257 S.E.2d 396-97 (1979) (evidence of threats by decedent and prior near fatal attack by another relevant to reasonableness of defendant's response to decedent's behavior).

108. Kinports, *supra* note 39, at 415.

109. *Id.*

110. *Id.* at 465.

not be reasonable.¹¹¹ Additionally, some argue that such a standard transforms an objective standard into a purely subjective one.¹¹² Another contention is that use of a reasonable battered woman standard requires reclassification of self-defense from a justification to an excuse.¹¹³ Justifying a battered woman's actions on the basis of psychological characteristics not present in the ordinary person is contrary to the essence of justification theory, that anyone acting in a similar manner would be entitled to an acquittal.¹¹⁴ Instead, the jury is instructed to acquit due to "an identifiable psychological syndrome that caused [the battered woman] to assess the dangerousness of the situation in a different manner than an average, ordinary person."¹¹⁵

Commentators have raised more serious questions regarding equal protection violations.¹¹⁶ They argue that discrimination against male defendants and victims will result from the use of a "reasonable battered woman" standard.¹¹⁷ This argument is based on a United States Supreme Court ruling that in cases in which gender-neutral devices are sufficient to address a problem, states are prohibited from using gender classifications.¹¹⁸ As such, a reasonable battered woman standard would withstand a constitutional evaluation only upon a showing that gender-neutral standards do not provide just results for battered women.¹¹⁹

Even if courts adopt a reasonable battered woman standard, conviction may still result if the defendant cannot show a reasonable belief in an imminent threat.¹²⁰ North Carolina courts employ a very narrow definition requiring an evaluation of the decedent's actions at the moment of the killing.¹²¹ This interpretation finds general support among those who believe that requiring an im-

111. *Id.* at 417; see C. EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION 56-57 (1987); Rosen, *supra* note 2, at 15-16 n.20.

112. Kinports, *supra* note 39, at 418; see Rittenmeyer, *Of Battered Wives, Self-Defense and Double Standards of Justice*, 9 J. CRIM. JUST. 389, 392-93 (1981); Rosen, *supra* note 2, at 41-42 n.170. One commentator has argued that it would be impossible to confine such a standard to use in battered women cases, but would lead to application of a reasonable intoxicated, hotheaded, or cowardly defendant. See Kinports, *supra* note 39, at 418-19 (arguing that such extensions to include these traits do not necessarily follow because characteristics of the battered woman, unlike these traits, are not within her control, do not evidence moral failure, and are not targeted by the law for change).

113. Kinports, *supra* note 39, at 420; see Rosen, *supra* note 2, at 42-45. Professor Rosen argues that stretching the traditional rules of self-defense to encompass cases in which battered women kill their batterers in nonconfrontational situations raises the specter of encouraging self-help. *Id.* at 53. Rosen further argues that by treating self-defense as an excuse, the judge is allowed to decide that it would be unjust to convict the defendant, but is permitted to avoid a judgment that the defendant's actions were right and just, which could result in increased violence against abusive husbands. *Id.* at 55. This, she concludes, would strike a proper balance between understanding the use of self-help, but not encouraging it. *Id.* at 55. This appears to be a radical departure from the traditional classification of self-defense as a justification and, given the tendency of the courts to ignore the theoretical distinction between justification and excuse, is unlikely to take place.

114. See Rosen, *supra* note 2, at 42.

115. See, e.g., *id.* at 43.

116. Kinports, *supra* note 39, at 422.

117. See Buda & Butler, *supra* note 28, at 378-80; Rittenmeyer, *supra* note 112, at 393-95; Rosen, *supra* note 2, at 33 n.126.

118. *Orr v. Orr*, 440 U.S. 268, 283 (1979) (finding unconstitutional an Alabama statute authorizing the ordering of alimony payments by husbands but not wives).

119. Buda & Butler, *supra* note 28, at 379.

120. See *supra* text accompanying notes 24-31.

121. See *supra* notes 31, 78-84 and accompanying texts.

mediate threat prevents unnecessary self-help.¹²² According to this view, cases involving battered women do not call for special treatment but illustrate just how crucial the imminence requirement is in preventing self-help.¹²³ Others argue that because the battered woman is faced with either waiting for her husband to kill her or killing him first, the "imminency" requirement should be construed loosely to allow her to claim self-defense.¹²⁴ In these cases, perhaps the "proper inquiry is not the immediacy of the threat but the immediacy of the response necessary in defense."¹²⁵ Under this view, if the threatened harm is of a nature that by waiting until the last minute to take defensive action the intended victim is effectively denied her right to self-defense, the law of self-defense should allow her to act as early as necessary to defend herself.¹²⁶ However, determining at what point action becomes reasonably necessary would depend on further subjective beliefs of the defendant and exacerbate the problem of fabricated evidence that the narrow definition of imminence attempts to counter.¹²⁷

As a matter of public policy, the narrow interpretation of imminence reflects society's belief that every human life is valuable, even the lives of those who evoke disgust and contempt, such as batterers and child molesters.¹²⁸ While there may not be a more sympathetic defendant than a battered woman or molested child, the law does not sentence to death one who has threatened to kill, even if he has fulfilled such threats in the past.¹²⁹ Therefore, more than severe beatings, psychological domination, and threats of death must be required before self-defense becomes available. Moreover, although batterers undoubtedly deserve punishment, they are no less entitled to equal protection of their lives.¹³⁰ The general deterrence offered by the narrowly construed imminence requirement provides this protection.¹³¹

Still remaining is the question of what change in the law, if any, would strike a balance between the undeniably dire situation facing battered women and society's interest in discouraging self-help in nonconfrontational settings.

122. See *supra* note 29; *infra* text accompanying notes 128-31.

123. W. LAFAVE & A. SCOTT, *supra* note 2, at 458; see Note, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 HASTINGS L.J. 895, 926-30 (1981).

124. See Note, *supra* note 123, at 928-30.

125. 2 P. ROBINSON, CRIMINAL LAW DEFENSES § 131(c)(1) (1984).

126. *Id.* Robinson provides the following example: A kidnapped D and told D that in one week he would kill him. Every morning D had the chance to kill A and escape. If taken literally, the imminence requirement would make D wait until A attempted to carry out his stated intention to kill defendant before he could avail himself properly of self-defense. *Id.* However, such a case is distinguishable from those involving battered women. First, the woman can physically leave (even though she may honestly believe that she cannot). Second, to find her actions reasonable a jury would have to consider her unique perceptions as a battered woman, while the reasonableness of D's response is not dependent on an understanding of characteristics not present in all people.

127. See *Norman*, 324 N.C. at 265, 378 S.E.2d at 15.

128. See *People v. Aris*, 215 Cal. App. 3d 1178, 1189, 264 Cal. Rptr. 167, 174 (1989).

129. *Id.*; see also *Rosen*, *supra* note 2, at 52 (pointing out that most people killed in self-defense would not be sentenced to death if convicted of the threatened crimes).

130. See *supra* notes 116-19 and accompanying text for a discussion of the equal protection challenges to the reasonable battered woman standard. Tailoring the imminence requirement of self-defense to accommodate battered women would meet the same challenges.

131. *Aris*, 215 Cal. App. 3d at 1189, 264 Cal. Rptr. at 174.

Establishing the existence of battered woman syndrome as a new ground for an instruction on voluntary manslaughter would accomplish this balance.¹³² Currently the grounds for an instruction on voluntary manslaughter are imperfect self-defense and adequate provocation.¹³³ A defendant asserting either of these grounds must still withstand an objective reasonableness test.¹³⁴ Thus, the battered woman would face the same barriers as those she encounters when claiming perfect self-defense. The legislature's establishment of the existence of battered woman syndrome as a third ground for such an instruction avoids the determination of reasonableness and other problematic issues, including the requirements that defendant not be the initial aggressor or use excessive force. The defendant is still punished for a killing that society cannot condone, but the offense is mitigated and the penalty lessened. This result does not send a message to the community that this behavior is encouraged or even acceptable, but does provide for the defendant a more just outcome than a murder conviction.¹³⁵

In conjunction with this change, the North Carolina General Assembly should enact statutes designed to offer greater protection for battered women and prevent domestic violence from escalating to the point at which self-help is the battered woman's only apparent option.¹³⁶ These statutes could include provisions requiring law enforcement officers to make a warrantless arrest when given cause to believe an incident of abuse has occurred within a certain period of time,¹³⁷ to advise the battered woman of the existence of shelters for her and

132. The definition of battered woman then would become all important. Dr. Walker's definition of a battered woman as one who has been through the three-phase cycle of violence at least twice may be too broad. See Kinports, *supra* note 39, at 448. One commentator suggests that the jury consider the number of battering incidents, the severity of the harm inflicted, and the frequency of the beatings. *Id.* Courts should allow expert testimony on battered woman syndrome if the defendant presents any evidence of abuse. *Id.* at 449. Whether the defendant is in fact a battered woman ultimately is a question for the jury. *Id.*

133. For definition of voluntary manslaughter, see *supra* note 22.

134. A jury must determine the existence of adequate provocation to convict a defendant of voluntary manslaughter. Kinports, *supra* note 39, at 462. In evaluating whether the provocation was such as would arouse passion in the "reasonable person," a prolonged history of abuse and threats of death may be insufficient. *Id.* This is the same difficulty present in self-defense cases. *Id.*

135. Classifying battered woman syndrome as an excuse would have the same effect.

136. The current statutes concerning domestic violence are codified at N.C. GEN. STAT. § 50B (1989).

137. Such a provision may have prevented the tragedy in *Norman*. The officer testified that when he responded to a call from Mrs. Norman the evening before the killing, he found her bruised and crying. *Norman*, 324 N.C. at 272, 378 S.E.2d at 19 (Martin, J., dissenting). When Mrs. Norman told the officer that "her husband had beaten her all day long" and she "could not take it any longer," the officer responded that "he could do nothing for her unless she took out a warrant on her husband." *Id.* (Martin, J., dissenting).

In Missouri, an officer can arrest a person without a warrant if he has probable cause to believe that the person has assaulted a family or household member. MO. ANN. STAT. § 455.085 (Vernon Supp. 1990). The assault does not have to have occurred in the presence of the officer. *Id.* If the officer chooses not to make an arrest, he must file a report explaining his reasons. *Id.* Any officer called to the same address within 12 hours of the first report shall make an arrest on probable cause to believe the same offender has committed another violation. *Id.* The victim's refusal to sign an official complaint shall not prevent an arrest. *Id.*

Florida law allows a law enforcement officer to arrest a person without a warrant when there is probable cause to believe "that the person has committed a battery upon the person's spouse," the officer "reasonably believes that there is danger of violence unless the person alleged to have committed the battery" is arrested immediately, and he finds "evidence of bodily harm" or "evidence of

any minor children and of the legal channels available to her,¹³⁸ and to apply the same standards for response to complaints of domestic violence as are applied to cases involving strangers.¹³⁹ Further, the legislature should implement a "cooling off period" during which the battering spouse is denied bail.¹⁴⁰ Additionally, the law should establish spouse abuse as a separate and distinct offense, which in its most severe forms is punishable as a felony.¹⁴¹ Finally, the legislature must allocate more financial resources to the operation of shelters for battered women and for programs designed to rehabilitate battering spouses.

There is no question that the North Carolina Supreme Court's decision in *State v. Norman* is a correct application of the existing law. That this is true illustrates how inadequately traditional rules of law are equipped to resolve the problem of domestic violence, and exemplifies the need for changes in the law that will recognize the impact of battered woman syndrome on its victims and ensure more equitable treatment of cases involving battered women. Modification of the law of self-defense is not an appropriate means to remedy the dilemma facing women who suffer from battered woman syndrome. Although society sympathizes with her situation, it cannot accommodate her at the expense of principles of general deterrence and equal protection of human life. Altering the definition of voluntary manslaughter to include defendants who act while suffering from battered woman syndrome, while simultaneously enacting comprehensive legislation in an effort to preempt the outbreak of violence, will strike the proper balance between individualized justice for the battered woman and general deterrence of uncontrolled self-help.

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corroboration based upon the statements of one or more eyewitnesses." FLA. STAT. ANN. § 901.15 (West Supp. 1990).

138. Florida requires any law enforcement officer investigating a complaint of domestic violence to provide the victim the telephone number of the domestic violence center, and a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from domestic violence which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you custody of your minor child or children; and direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.

FLA. STAT. ANN. § 741.29 (1986).

139. Missouri has enacted laws prohibiting law enforcement officers from assigning complaints of domestic violence or violation of protective orders a lower priority than complaints involving strangers. MO. ANN. STAT. § 455.080(2) (Vernon Supp. 1990). Officers must respond immediately if "1) [t]he caller indicates that violence is imminent or in progress; or 2) [a] protection order is in effect; or 3) [t]he caller indicates that incidents of domestic violence have occurred previously between the parties." *Id.*

140. In Nevada one "arrested for a battery upon his spouse, former spouse, a person to whom he is related by blood, a person with whom he is or was actually residing or with whom he has a child in common, his minor child or a minor child of that person" must wait at least 12 hours after his arrest before being admitted to bail. NEV. REV. STAT. § 178.484(3) (1985).

141. Arkansas has done this. Domestic abuse is categorized as either wife-battering or assault on a wife. See ARK. STAT. ANN. § 5-26-301 to -07 (1979). First and second degree wife battering and aggravated assault on a wife are felonies, while third degree wife battering and all degrees of assault on a wife are misdemeanors. See *id.*